

Exhibit A

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 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Joseph W. Cotchett (#36324; jcotchett@cpmlegal.com)
 Steven N. Williams (#175489; swilliams@cpmlegal.com)
 Nanci E. Nishimura (#152621; nnishimura@cpmlegal.com)
 Aron K. Liang (#228936; aliang@cpmlegal.com)
 Douglas Y. Park (#233398; dpark@cpmlegal.com)

COTCHETT, PITRE & McCARTHY

San Francisco Airport Office Center
 840 Malcolm Road, Suite 200
 Burlingame, CA 94010
 Telephone: (650) 697-6000
 Facsimile: (650) 697-0577

Walter J. Lack (#57550; wlack@elllaw.com)
 Elizabeth L. Crooke (#90305; ecrooke@elllaw.com)
 Richard P. Kinnan (#123170; rkinnan@elllaw.com)

ENGSTROM LIPSCOMB & LACK

10100 Santa Monica Blvd., 16th Floor
 Los Angeles, CA 90067
 Telephone: (310) 552-3800
 Facsimile: (310) 552-9434

Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONALD WORTMAN,
WILLIAM ADAMS,
MARGARET GARCIA, individually
 and on behalf of all others similarly
 situated,

Plaintiffs,
 vs.

AIR NEW ZEALAND,
ALL NIPPON AIRWAYS,
CATHAY PACIFIC AIRWAYS,
CHINA AIRLINES,
EVA AIRWAYS,
JAPAN AIRLINES INTERNATIONAL,
MALAYSIA AIRLINES,
NORTHWEST AIRLINES,
QANTAS AIRWAYS,
SINGAPORE AIRLINES,
THAI AIRWAYS,
UNITED AIRLINES,
 Defendants.

Case No. **CV 07-5634**

CLASS ACTION COMPLAINT

**COMPLAINT FOR
 VIOLATIONS OF THE
 SHERMAN ANTITRUST ACT
 15 U.S.C. § 1**

JURY TRIAL DEMANDED

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1 Pursuant to the Federal Rules of Civil Procedure, Plaintiffs, on behalf of
2 themselves and all others similarly situated, hereby bring this action for treble
3 damages and injunctive relief under the federal antitrust laws of the United States,
4 Section 1 of the Sherman Antitrust Act of 1890, 15 U.S.C. § 1 ("Sherman Act")
5 and Sections 4 and 26 of the Clayton Antitrust Act of 1914, 15 U.S.C. §§ 15, 26
6 ("Clayton Act") against Defendants. Plaintiffs complain and allege upon
7 information and belief except as to those paragraphs applicable to the named
8 Plaintiffs, which are based on personal knowledge, as follows:

9 **NATURE OF THE ACTION**

10 1. This action arises from a global conspiracy among certain airlines to
11 fix, raise, maintain, and/or stabilize prices for long haul passenger transpacific
12 flights to and from the United States ("Passenger Air Transportation"), and for
13 fixed fuel surcharges on this transportation ("Fuel Surcharges"). Fuel surcharges
14 are fees charged to passengers by airlines purportedly to compensate the airlines
15 for increased fuel costs.

16 2. Plaintiffs, on behalf of all persons and entities that purchased
17 Passenger Air Transportation, to and from the United States, from any of the
18 Defendants and their co-conspirators or any predecessor, subsidiary, or affiliate of
19 each, at any time during the period from 2004 to August 2007 (the "Class
20 Period"), bring this action to recover treble damages and injunctive relief for
21 violations of the United States antitrust laws.

22 3. At all relevant times herein, Defendants were airlines that conducted
23 and sold Passenger Air Transportation, and charged fixed Fuel Surcharges on that
24 transport, to airline passengers in the United States and throughout the world,
25 including but not limited to flights to and from Los Angeles and to and from San
26 Francisco, California. Los Angeles International Airport ("LAX") and San
27 Francisco International Airport ("SFO") are considered the international U.S.
28 gateways to Asian and Pacific countries. The U.S. Department of Transportation

1 reported that in 2005 LAX and SFO were ranked in the top U.S. passenger
2 gateways to the world in scheduled passenger service. That year LAX and SFO
3 had 24.6 million gateway passengers, with the foreign share of the passengers at
4 an average 67%.

5 4. As further alleged herein, during at least the Class Period, Defendants
6 agreed, combined, and/or conspired with each other to fix, raise, maintain, and/or
7 stabilize the prices of Passenger Air Transportation and Fuel Surcharges thereon.
8 As a result of Defendants' unlawful conduct and conspiracy, Plaintiffs and the
9 other members of the Class paid artificially high prices for Passenger Air
10 Transportation and Surcharges thereon, and have been damaged accordingly.

11 **JURISDICTION AND VENUE**

12 5. This Complaint is brought under Sections 4 and 16 of the Clayton
13 Act, 15 U.S.C. §§ 15 and 26, to obtain injunctive relief and to recover treble
14 damages and the costs of this suit, including reasonable attorneys' fees, against
15 Defendants for the injuries sustained by Plaintiffs and the members of the Class by
16 reason of Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

17 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§
18 1331 and 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

19 7. This Court has *in personam* jurisdiction over each of the Defendants
20 because each was engaged in an illegal price-fixing scheme and conspiracy that
21 was directed at and/or caused injury to persons and entities residing in, located in,
22 or doing business in the Northern District of California and throughout the United
23 States.

24 8. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and
25 28 U.S.C. § 1391(b), (c), and (d) because during the Class Period many of the
26 Defendants resided, transacted business, were found, or had agents in this district,
27 and because a substantial part of the events giving rise to Plaintiffs' claims
28

1 occurred, and a substantial portion of the affected trade and commerce described
2 below has been carried out, in this district.

3 **MULTI-DISTRICT LITIGATION**

4 9. Venue is also proper in the Northern District because that court
5 presides over the multi-district litigation *In re International Air Transportation*
6 *Litigation*, MDL No. 1793. The Hon. Charles R. Breyer presides over the case,
7 and the Court has and will be called upon to address complex issues including
8 jurisdiction, the scope of relief which may be accorded, the application of United
9 States' antitrust and airline law, notice and claims procedures for class members
10 within and outside the United States, and the administration and distribution of
11 any funds which may be obtained through settlement and judgment.

12 **PARTIES**

13 **A. Plaintiffs**

14 10. Plaintiff **DONALD WORTMAN** is a citizen of the State of
15 California, Los Angeles County. Plaintiff Wortman purchased Passenger Air
16 Transportation and paid Fuel Surcharges thereon from Defendants Japan Airlines
17 International, Northwest Airlines, Singapore Airlines, Thai Airlines, and United
18 Airlines during the class period and has suffered pecuniary injury as a result of the
19 antitrust violations alleged herein.

20 11. Plaintiff **WILLIAM ADAMS** is a citizen of the State of California,
21 Los Angeles County. Plaintiff Adams purchased Passenger Air Transportation
22 and paid Fuel Surcharges thereon from Defendant Air New Zealand and has
23 suffered pecuniary injury as a result of the antitrust violations alleged herein.

24 12. Plaintiff **MARGARET GARCIA** is a citizen of the State of
25 California, Los Angeles County. Plaintiff Garcia purchased Passenger Air
26 Transportation and paid Fuel Surcharges thereon from Defendant Cathay Pacific
27 and has suffered pecuniary injury as a result of the antitrust violations alleged
28 herein.

1 13. Plaintiffs identified in the preceding three paragraphs are collectively
2 referred to herein as "Plaintiffs."

3 **B. Defendants**

4 14. Defendant **Air New Zealand** is a New Zealand company with its
5 principal place of business at Quay Tower, 29 Customs St. West, Auckland, 1020,
6 New Zealand. Air New Zealand conducts Passenger Air Transportation throughout
7 the world, including into the U.S. and especially California.

8 15. Defendant **All Nippon Airways** is a Japanese company with its
9 principal place of business at Shidome-City Center, 1-5-2, Higashi-Shimbashi,
10 Minato-ku, Tokyo 105-7133, Japan. All Nippon Airways conducts Passenger Air
11 Transportation throughout the world, including into the U.S. and especially
12 California.

13 16. Defendant **Cathay Pacific Airways** is a Hong Kong-based company
14 with its principal place of business at 9 Connaught Road, Central Swirel
15 Housepox Box 1 GPO, Hong Kong K3. Cathay Pacific Airways conducts
16 Passenger Air Transportation throughout the world, including direct transpacific
17 flights into the United States, especially California.

18 17. Defendant **China Airlines** is a Taiwanese company with its principal
19 place of business at 131 Nanking E Rd., Section 3, Taipei, Taiwan. China Airlines
20 conducts Passenger Air Transportation throughout the world, including direct
21 transpacific flights into the United States, especially California.

22 18. Defendant **EVA Airways** is a Taiwanese company with its principal
23 place of business at 16F.-1, No. 207, Fusing Road, Taoyuan City, Taoyuan
24 County, Taiwan. EVA Airways conducts Passenger Air Transportation throughout
25 the world, including direct transpacific flights into the United States, especially
26 California.

27 19. Defendant **Japan Airlines International** is a Japanese company with
28 its principal place of business at 4-11, Higashi-Shinagawa 2-chrome, Shinagawa-

1 Ku, Tokyo 140-8605, Japan. Japan Airlines International conducts Passenger Air
2 Transportation throughout the world, including into the United States, especially
3 California.

4 20. Defendant **Malaysia Airlines** is a Malaysian corporation with its
5 principal place of business at MAS Complex A, Sultan Abdul Azia Shah Airport,
6 47200 Subang, Selangor Darui Ehsan, Malaysia. Malaysia Airlines conducts
7 Passenger Air Transportation throughout the world, including into the United
8 States, especially California.

9 21. Defendant **Northwest Airlines** is a Delaware corporation with its
10 principal place of business at 2700 Lone Oak Parkway, Eagan, MN 55121.
11 Northwest Airlines conducts Passenger Air Transportation throughout the world,
12 including into the United States, especially California.

13 22. Defendant **Qantas Airways** is an Australian company with its
14 principal place of business at 203 Coward Street, Qantas Centre, Mascot NSW
15 2020 C3. Qantas Airways conducts Passenger Air Transportation throughout the
16 world, including into the United States, especially California.

17 23. Defendant **Singapore Airlines** is a Singapore company with its
18 principal place of business at Airline House, 25 Airline Road, 819829 Singapore.
19 Singapore Airlines conducts Passenger Air Transportation throughout the world,
20 including direct transpacific flights into the United States, especially California.

21 24. Defendant **Thai Airways** is a Thailand company with its principal
22 place of business at 89 Vibhavadi-Rangsit Road, Bangkok, Thailand 10900. Thai
23 Airways conducts Passenger Air Transportation throughout the world, including
24 direct transpacific flights into the United States, especially California.

25 25. Defendant **United Airlines** is a Delaware corporation with its
26 principal place of business at 77 W. Wacker, Chicago, IL 60601. United Airlines
27 is one of the largest passenger airlines in the world with more than 3,600 flights a
28 day to more than two hundred destinations. United Airlines conducts Passenger

1 Air Transportation throughout the world, including into the United States,
2 especially San Francisco International Airport, where United Airlines operates a
3 hub and maintenance operation center. United Airlines is the largest employer in
4 San Mateo County, California, which is located within this district.

5 **C. Unnamed Co-Conspirators**

6 26. At all relevant times, other airlines, trade groups, or other entities,
7 willingly conspired with Defendants in their unlawful restraint of trade. All
8 averments herein against named Defendants are also averred against these
9 unnamed co-conspirators as though set forth at length.

10 **D. Agents**

11 27. The acts alleged to have been done by Defendants were authorized,
12 ordered or done by their directors, officers, agents, employees, or representatives
13 while actively engaged in the management of each of the Defendants' affairs.

14 **TRADE AND COMMERCE**

15 28. Throughout the Class Period, there was a continuous and
16 uninterrupted flow of Passenger Air Transportation in international commerce
17 throughout the United States and especially into and out of Los Angeles and San
18 Francisco. Defendants' unlawful activities, as described herein, took place within
19 the flow of commerce to Passenger Flight customers throughout the world, and
20 had a direct, substantial and reasonably foreseeable effect upon interstate and
21 international commerce in the United States.

22 **PLAINTIFFS AND THE CLASS SUFFERED INJURY THROUGH**
23 **COLLUSIVE PRICE INCREASES AND SURCHARGES**

24 29. As Defendants controlled a vast majority of the Passenger Flight
25 services during the Class Period with their dominant combined market share,
26 Passenger Flight customers were unable to shop for Passenger Air Transportation
27 from other carriers during that period, because of the lack of competition which
28 allowed Defendants to reap enormous profits from the Fuel Surcharges.

1 30. In addition, Fuel Surcharges were often treated by Defendants and
2 other carriers similar to a tax or other surcharge, such as an airport facility charge
3 or a government mandated September 11 security charge. As such, Fuel
4 Surcharges were not always advertised as part of Defendants' fares, and were
5 added on to the base fare as part of the purchase transaction.

6 31. Because surcharges generally are designed to compensate for
7 increased external costs, they should bear a relatively constant relationship to
8 external cost levels. Thus, in a competitive market, Fuel Surcharges should rise
9 and fall at relatively constant ratios to the associated jet fuel costs. Since their
10 inception in 2004, the ratio of Defendants' Surcharges to external costs has
11 increased steadily. The Fuel Surcharges bore no relationship to the Defendants'
12 actual fuel costs or fuel cost increases.

13 32. The ratio of Defendants' profits to external costs was therefore quite
14 high due to the concerted implementation and maintenance of the agreed-upon
15 Passenger Air Transportation and Fuel Surcharge price levels. So despite
16 increased fuel costs during the Class Period, Defendants' Surcharges were actually
17 responsible for outstanding *profit growth* for Defendants beyond record fuel costs.

18 CLASS ACTION ALLEGATIONS

19 33. Plaintiffs bring this action on their own behalf and as a class action
20 pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the
21 following Class:

22 All individuals or entities (excluding governmental
23 entities, Defendants, and their parents, predecessors,
24 subsidiaries, affiliates, and their co-conspirators) who
25 purchased passenger air transportation, for long haul
26 transpacific flights and who paid a fuel surcharge on
27 their tickets from any of the Defendants and their
28 co-conspirators or any predecessor, subsidiary, or
affiliate of each, at any time during the period from 2004
to August 2007.

34. Because such information is in the exclusive control of Defendants,
Plaintiffs do not know the exact number of Class members. Due to the nature of

1 the trade and commerce involved, however, Plaintiffs believe that Class members
2 number at least in the thousands and are sufficiently numerous and geographically
3 dispersed throughout the United States and the world so that joinder of all Class
4 members is impracticable. It is estimated that there were more than 15 million
5 passengers traveling to the Pacific out of California in 2006.

6 35. There are questions of law or fact common to the Class, including:

7 a. Whether Defendants engaged in a combination or conspiracy
8 among themselves to fix, raise, maintain, and/or stabilize Passenger Air
9 Transportation and Surcharge prices charged effecting commerce in the United
10 States and throughout the world;

11 b. The duration of the conspiracy alleged in this Complaint and
12 the nature and character of the acts performed by Defendants in furtherance of the
13 conspiracy;

14 c. Whether the alleged conspiracy violated Section 1 of the
15 Sherman Act;

16 d. Whether the conduct of Defendants, as alleged in this
17 Complaint, caused injury to the businesses or property of Plaintiffs and the other
18 members of the Class;

19 e. The effect of Defendants' conspiracy on the Passenger Air
20 Transportation and Surcharge prices charged in the United States and throughout
21 the world during the Class Period; and

22 f. The appropriate measure of damages sustained by Plaintiffs
23 and other members of the Class.

24 36. Plaintiffs are members of the Class. Plaintiffs' claims are typical of
25 the claims of the Class members. Plaintiffs will fairly and adequately protect the
26 interests of the Class. Plaintiffs purchased Passenger Air Transportation and
27 Surcharges from one or more Defendants, and their interests are coincident with
28 and not antagonistic to those of other members of the Class. Plaintiffs are

1 represented by counsel competent and experienced in the prosecution of antitrust
2 and class action litigation.

3 37. The questions of law and fact common to the members of the Class
4 predominate over any questions affecting only individual members.

5 38. A class action is superior to other methods for the fair and efficient
6 adjudication of this controversy. Treatment as a class action will permit a large
7 number of similarly situated persons to adjudicate their common claims in a single
8 forum simultaneously, efficiently, and without the duplication of effort and
9 expense that numerous individual actions would engender.

10 39. Class treatment will also permit the adjudication of relatively small
11 claims by many Class members who otherwise could not afford to litigate an
12 antitrust claim such as is asserted in this Complaint.

13 40. This class action presents no difficulties in management that would
14 preclude maintenance as a class action. Finally, the Class is readily definable and
15 is one for which records of the names and addresses of the members of the Class
16 exist in the files of Defendants.

17 **DEFENDANTS AND THE PASSENGER FLIGHT MARKET**

18 41. Each Defendant possesses significant market share on their routes of
19 travel. The principal competitors for the Defendants in the transpacific long haul
20 Passenger Air Transportation market are therefore one another.

21 42. Passenger Air Transportation is a commodity product that is fungible
22 in the sense that Passenger Air Transportation provided by any one airline is
23 readily substitutable for the Passenger Air Transportation provided by any other
24 airline.

25 43. Passenger Air Transportation is a homogenous service sold by
26 airlines, including Defendants, to airline customers, including Plaintiffs and the
27 members of the Class, primarily based on price.
28

1 44. The Passenger Air Transportation market in the United States and
2 worldwide is highly concentrated, and there exists substantial barriers to entry in
3 this market; both factors facilitate the implementation and maintenance of a
4 horizontal price-fixing cartel such as that perpetrated by Defendants and alleged
5 herein.

6 **DEFENDANTS' CONCERTED FUEL SURCHARGES**

7 45. Generally, surcharges are a feature of the global air transportation
8 market, in which airlines charge extra fees to their customers, above and beyond
9 basic flight rate charges, with the intent of defraying certain external costs of the
10 carriers.

11 46. Beginning in 2004, Defendants agreed to act in concert with one
12 another in demanding the Surcharges to defray fuel costs and agreeing when and
13 how much to increase the Surcharges to their Passenger Flight customers.

14 47. Defendants were aware that their imposition of Fuel Surcharges and
15 other surcharges would not be successful if their supposed competitors did not join
16 them; otherwise, customers would be free to seek out lower prices. For this
17 reason, Defendants entered into agreements to raise surcharges at the same times
18 and in the same amounts.

19 48. But for Defendants' Passenger Air Transportation conduct,
20 Defendants would have been unable to perpetrate the extent to which they
21 increased the prices of their Fuel Surcharges.

22 49. The collusion of Japan Airlines International and All Nippon Airways
23 ("ANA") is representative of the behavior of the other Defendants. Japan Airlines
24 International and ANA agreed to raise and lower fares on nearly always the same
25 dates and were in lockstep on surcharges for transpacific fares:

26 ///

27 ///

28 ///

1 June 8, 2004, ANA files a notice with
2 the Japanese government to raise
3 IATA international fares, in the wake
4 of increased fuel prices, to and from
5 Japan, effective **July 1**, 5% hike,
6 exception North America economy
7 fares, but not business class.

8
9 January 5, 2005, ANA announces it
10 will add fuel surcharges on
11 international fares on **February 1**.
12 The surcharges for transpacific flights
13 were 2,500 yen.

14
15 June 3, 2005, Japan Airlines files a
16 notice with the Japanese government
17 to raise its international fuel
18 surcharge effective **July 1**.

19
20 January 16, 2006, Japan Airlines files
21 a notice with the Japanese
22 government to raise its international
23 fuel charge effective **March 1**.

June 8, 2004, Japan Airlines files a
notice with the Japanese government
to raise international fares, in the
wake of increased fuel prices, to and
from Japan, effective **July 1**, 5% hike,
exception North American economy
fares, but not business class.

January 20, 2005, Japan Airlines
announces it will add fuel surcharges
on international passenger fares on
February 1. The surcharges for
transpacific flights were 2,500 yen.

June 7, 2005, ANA files a notice with
the Japanese government to raise its
international fuel surcharge effective
July 7.

January 23, 2006, ANA files a notice
with the Japanese government to raise
its international fuel surcharge,
effective **March 1**.

1 August 17, 2006, Japan Airlines files
2 a notice with the Japanese
3 government to raise its international
4 fuel surcharge, effective **October 1**,
5 from 8,000 yen to 13,600 yen (\$66 to
6 \$113).

8 November 16, 2006, Japan Airlines
9 files a notice with the Japanese
10 government to reduce the fuel
11 surcharge on international passenger
12 fares effective **January 1**, lowering
13 the surcharge from 13,600 yen to
14 13,000 yen (\$113 to \$108).

16 March 19, 2007, Japan Airlines files a
17 notice with the Japanese government
18 to reduce the fuel surcharge on
19 international passenger fares effective
20 **May 1**, to 11,000 yen or \$91.

22 May 15, 2007, Japan Airlines files a
23 notice with the Japanese government
24 to raise the fuel surcharge on
25 international passenger fares effective
26 **July 1**, from 11,000 yen or \$91 to
27 12,000 yen or \$100.

August 31, 2006, ANA files a notice
with the Japanese government to raise
its international fuel surcharge,
effective **October 15**, from 8,000 yen
to 13,600 yen (\$66 to \$113).

November 16, 2006, ANA files a
notice with the Japanese government
to reduce the fuel surcharge on
international passenger fares effective
January 1, lowering the surcharge
from 13,600 yen to 13,000 yen (\$113
to \$108).

March 20, 2007, ANA files a notice
with the Japanese government to
reduce the fuel surcharge on
international passenger fares effective
May 1, to 11,000 yen or \$91.

May 25, 2007, ANA files a notice
with the Japanese government to raise
the fuel surcharge on international
passenger fares effective **July 10**,
from 11,000 yen or \$91 to 12,000 yen
or \$100.

1 August 15, 2007, Japan Airlines files
 2 a notice with the Japanese
 3 government to raise the fuel
 4 surcharge on international passenger
 5 fares effective **October 1**, from
 6 12,000 yen or \$100 to 13,000 yen or
 7 \$108.

August 20, 2007, ANA files a notice
 with the Japanese government to raise
 the fuel surcharge on international
 passenger fares effective **October 1**,
 from 12,000 yen or \$100 to 13,000
 yen or \$108.

8 50. Other defendants did likewise. United Airlines, for example, charged
 9 a surcharge in line with Japan Airlines International and All Nippon Airways as
 10 evidenced by the following ticket. From July 10, 2007 to October 1, 2007 Japan
 11 Airlines International and All Nippon Airways had their fuel surcharge on
 12 international passenger fares transpacific set at 12,000 yen or \$100. The United
 13 ticket for August 16, 2007 shows the surcharge fare, marked YQ, at \$100.

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CARTEL-LIKE TRADE ORGANIZATIONS

51. Defendants' executives, as well as other air carriers' executives, met formally or informally over the years at various trade meetings or meetings of trade associations, such as the International Air Transport Association, the Association of Asian Pacific Airlines, oneworld, Star Alliance and SkyTeam Alliance. At one or more of these meetings Defendants conspired to artificially inflate fuel Surcharges on international passenger air transportation.

52. One of the keys to the conspiracy is the 42-year-old **Association of Asia Pacific Airlines** ("AAPA"). The 17-member trade association, based in Kuala Lumpur, Malaysia, is the most significant group representing Asia/Pacific carriers. The AAPA boasts that its "member airlines carry 285 million passengers and 10 million tonnes of cargo representing approximately one-fifth of global passenger traffic and one-third of global air cargo traffic respectively." Ten of the defendants are members of AAPA.

53. The primary purpose of AAPA is to serve as a forum for members' views on issues of common interest and to foster close cooperation. According to the organization, "AAPA speaks with a common voice on behalf of the Asia Pacific carriers and puts forward Asian perspectives when dealing with governments, aircraft manufacturers, airport authorities and other organizations on industry issues. The activities of the Association cover every aspect of civil aviation where the airlines feel they can work together for mutual benefit. In addition, AAPA retains access to specialized legal and aviation consultants in Brussels and Washington, a reflection of the significant impact which the profusion of U.S. and E.U. regulatory developments have on all international carriers including Asia Pacific airlines."

54. AAPA was formed during a meeting of Asian airline executives in 1965 to discuss regional cooperation. The following year, Philippine Airlines, China Airlines, Korean Airlines and Malaysian Airlines officially formed the

1 Orient Airlines Research Bureau. The group evolved into the Orient Airlines
2 Association and in 1996 changed its name to Association of Asia Pacific Airlines.

3 55. Another key to the conspiracy is the Geneva-based International Air
4 Transport Association. All of the defendants are members of the IATA, which
5 was founded in 1945 in Havana, Cuba. IATA represents more than 240 airlines
6 comprising 94% of scheduled international air traffic. It describes itself as “the
7 prime vehicle for inter-airline cooperation.” It was an agreement reached at an
8 IATA meeting in Geneva on May 28, 2004 that played a role in triggering the fuel
9 Surcharge conspiracy.

10 56. Alliance memberships by airline:

11 **Air New Zealand**

- 12 • Member of the Association of Asia Pacific Airlines.
- 13 • Member of the Star Alliance.
- 14 • Member of the International Air Transport Association.

15 **All Nippon Airways**

- 16 • Member of the Association of Asia Pacific Airlines.
- 17 • Member of the Star Alliance.
- 18 • Member of the International Air Transport Association.

19 **American Airlines**

- 20 • Member of oneworld.
- 21 • Member of the International Air Transport Association.

22 **Cathay Pacific Airways**

- 23 • Member of the Association of Asia Pacific Airlines.
- 24 • Member of oneworld.
- 25 • Member of the International Air Transport Association.

26 **China Airlines**

- 27 • Member of the Association of Asia Pacific Airlines.
- 28 • Member of the International Air Transport Association.

EVA Airlines

- Member of the Association of Asia Pacific Airlines.
- Member of the International Air Transport Association.

Japan Airlines International

- Member of the Association of Asia Pacific Airlines.
- Member of oneworld.
- Member of the International Air Transport Association.

Malaysia Airlines

- Member of the Association of Asia Pacific Airlines.
- Member of the International Air Transport Association.

Northwest Airlines

- Member of the SkyTeam Alliance.
- Member of the International Air Transport Association.

Qantas Airways

- Member of the Association of Asia Pacific Airlines.
- Member of oneworld.
- Member of the International Air Transport Association.

Singapore Airlines

- Member of the Association of Asia Pacific Airlines.
- Member of the Star Alliance.
- Member of the International Air Transport Association.

Thai Airways

- Member of the Association of Asia Pacific Airlines.
- Member of the Star Alliance.
- Member of the International Air Transport Association.

United Airlines

- Member of the Star Alliance.
- Member of the International Air Transport Association.

CODE SHARING BUSINESS PARTNERSHIPS

57. In addition to the four different alliances/trade groups, various defendants are in effect business partners with each other through what is called code sharing. Code sharing is a business term which was first originated in 1990 when Qantas Airways and American Airlines combined services between an array of U.S. and Australian cities. Code sharing is a legal business arrangement. However, it provides a mechanism to conduct illegal activity.

58. A code share is part of a "cooperative services" agreement between the two carriers. It refers to the practice where a flight operated by an airline is jointly marketed as a flight for one or more other airlines. Most major airlines today have code sharing partnerships with other airlines. "Code" refers to the identifier used in flight schedule, generally the 2-character International Air Transport Association airline designator code and flight number. For example, YY123, flight 123 operated by the airline YY, could be sold by airline ZZ as ZZ456. It is a business partnership that allows airlines to earn revenue by selling tickets on a partner's flight.

59. According to the U.S. Department of Transportation and Defendants, the following are the code sharing partnerships of the defendants listed alphabetically:

- Air New Zealand / EVA Airways
- Air New Zealand / Qantas (Tasman route)
- Air New Zealand / Japan Airlines International
- Air New Zealand / Northwest Airlines
- Air New Zealand / Singapore Airlines
- Air New Zealand / Thai Airways
- Air New Zealand / United Airlines
- All Nippon Airways / Asiana Airlines
- All Nippon Airways / EVA Airways

1 All Nippon Airways / Malaysia Airlines
2 All Nippon Airways / Singapore Airlines
3 All Nippon Airways / United Airlines
4 China Airlines / American Airlines
5 Cathay Pacific Airways / American Airlines
6 Cathay Pacific Airways / Japan Airlines International
7 China Airlines / Thai Airways
8 EVA Airways / Air New Zealand
9 EVA Airways / American Airlines
10 EVA Airways / All Nippon Airways
11 EVA Airways / Qantas
12 EVA Air / American Airlines
13 Japan Airlines International / Air New Zealand
14 Japan Airlines International / American Airlines
15 Japan Airlines International / Cathay Pacific
16 Japan Airlines International / Korean Air
17 Japan Airlines International / Northwest Airlines
18 Japan Airlines International / Qantas Airlines
19 Japan Airlines International / Singapore Airlines
20 Japan Airlines International / Thai Airways
21 Malaysia Airlines / All Nippon Airways
22 Malaysia Airlines / Thai Airways

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1 Northwest Airlines / Air New Zealand
 2 Northwest Airlines / Asiana Airlines
 3 Northwest Airlines / Japan Airlines International
 4 Northwest Airlines / Korean Air
 5 Qantas Airways / Air New Zealand
 6 Qantas Airways / American Airlines
 7 Qantas Airways / EVA Airways
 8 Qantas Airways / Japan Airlines International
 9 Singapore Airlines / Air New Zealand
 10 Singapore Airlines / Asiana Airlines
 11 Singapore Airlines / All Nippon Airways
 12 Singapore Airlines / Malaysian Airlines
 13 Singapore Airlines / United Airlines
 14 Thai Airways / Air New Zealand
 15 Thai Airways / China Airlines
 16 Thai Airways / Japan Airlines International
 17 Thai Airways / Malaysia Airlines
 18 Thai Airways / United Airlines
 19 United Airlines / Air New Zealand
 20 United Airlines / All Nippon Airways
 21 United Airlines / Asiana Airlines
 22 United Airlines / Singapore Airlines
 23 United Airlines / Thai Airways

24 **CARTEL ACTIVITY MEETINGS**

25 60. Over the years, executives of Defendant airlines have attended
 26 numerous meetings where cartel-like activity was accomplished. Here are a few
 27 examples of meetings where executives discussed and agreed on fuel surcharges:
 28

1 **61. The International Air Transport Association, Special Meeting,**
2 **Geneva, May 28, 2004.** Fuel costs were the main topic of this meeting and there
3 were agreements on how to add surcharges for fuel. The Montreal Gazette
4 reported on June 1, 2004, that “member carriers of the International Air Transport
5 Association might raise international fares by as much as five percent to help
6 cover a surge in jet fuel costs. The proposed fare increase of between two percent
7 and five percent was agreed at a May 28 meeting of the association, which
8 represents more than 270 airlines worldwide, an IATA spokesperson said.”

9 **62. The International Air Transport Association Annual General**
10 **Meeting and World Air Transport Summit, Singapore, June 6-8, 2004.** More
11 than 600 airline executives attended this annual summit. Giovanni Bisignani,
12 IATA CEO said in a welcoming statement, “While record high fuel prices
13 challenge our profitability it is time to put our efforts toward rebuilding the
14 industry.” Immediately following this meeting on June 8, 2004 both Japan
15 Airlines International and All Nippon Airways filed applications with the Japanese
16 government to raise international passenger fares because of high fuel costs. In a
17 news release announcing the Fuel Surcharge hike, Japan Airlines International
18 said:

19 **“The application follows a special meeting of the members of the**
20 **International Air Transport Association in Geneva, May 28,**
21 **(2004) when a resolution was discussed to raise fares in the wake**
22 **of increased fuel prices. This resolution has now been adopted.”**

23 Japan Airlines International and All Nippon Airways were in lockstep on June 8,
24 2004, both announcing on that day that a five percent fuel Surcharge would be go
25 into effect, on the same day for both airlines, July 1, 2004.

26 **63. 2005 International Flight Services Association, Global Leadership**
27 **Conference - Asia Pacific, August 30 - September 1, 2005 Tokyo Japan:** This
28 meeting was labeled as “The Challenge of Change.” Among the participants

1 were, Makoto Fukada, Managing Director and Senior Vice President International
2 Passenger, Japan Airlines; Sandra Pineau, Senior Director of Planning and Design,
3 Continental Airlines; Charles Grossrieder, a manager at Cathay Pacific Airways;
4 Nikom Raviyan, Vice President, Thai Airways; Sandeep Bahl, General Manager,
5 Northwest Airlines, Shigeru Miyata, Vice President, Japan Airlines; Kriengsakdi
6 Phatharacharukul, Director, Thai Airways; and Hee Won Jo, Senior Manager,
7 Asiana Airlines.

8 **64. 2nd Annual Asia Pacific & Middle East Aviation Outlook Summit**
9 **2006, December 5-6, 2005 Kuala Lumpur, Malaysia:** The theme of this
10 meeting was "Towards Best Practice; Maximising Revenues and Minimising
11 Costs." On the first day of the meeting, the guests included Dato Seri Bashir
12 Ahmad, Malaysia Airport's CEO; Willy Boulter, Commercial Director for Virgin
13 Atlantic Airways; and Stanley Kuppusamy, President, International Relations,
14 Singapore Airlines. Fuel surcharges were a topic of discussion.

15 **65. Aviation Emergency Response 2006, AAPA sponsored,**
16 **September 19-21, 2006 Bangkok, Thailand:** This meeting was attended by
17 international airport officials and AAPA member executives. Meetings were held
18 on increasing revenues in the transpacific area by way of Fuel Surcharges and
19 other financial means.

20 **66. 3rd Annual Asia Pacific & Middle East Aviation Outlook Summit,**
21 **November 9-10, 2006 Singapore:** Participating in this meeting were executives
22 from most of the Defendant airlines, including Geoff Dixon, CEO of Qantas and
23 Huang Cheng Eng, Executive VP for Singapore Airlines. One of the issues
24 presented and discussed was "*Fighting Costs: Fuel prices and managing risk*
25 *exposure.*"

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67. AAPA Forum, November 28-29, 2006 Bandar Seri Begawan, Brunei Darussalam: More than 120 aviation industry stakeholders attended this meeting, organized by AAPA. At this meeting, Defendants and others discussed surcharges.

68. **Asia Pacific Aviation Summit, July 24-25, 2007 Sydney, Australia:** This meeting was put on by the Asia Pacific aviation industry. Some of the issues discussed included the impact of the investigation by the U.S. Department of Justice into fare price fixing. Another topic was “working together efficiently” to diffuse the investigation of added surcharges.

THE INVESTIGATION

69. The U.S. Department of Justice (“DOJ”) started investigating air passenger fuel surcharge conspiracies worldwide in 2006, particularly transatlantic routes and transpacific routes to and from the West Coast. The DOJ announced on August 1, 2007 a \$300 million settlement with British Airways and it cited passenger transatlantic routes. In its news release, the DOJ said: “The Department also charged that between August 2004 and February 2006, British Airways engaged in a conspiracy to suppress and eliminate competition by fixing the Fuel Surcharge charged to passengers on long-haul international flights, including flights between the United States and the United Kingdom.”

70. The DOJ also focused on **transpacific flights** to and from the United States, noting that investigation is “ongoing” and includes other Defendants named herein.

71. The DOJ also announced a settlement with Korean Air for fare price fixing on flights from the United States to Korea. The DOJ stated that Korean Air has “agreed to cooperate with the Department’s ongoing investigation.” Korean Air’s unnamed co-conspirator in the passenger fare price fixing via Fuel Surcharges was widely reported to be Asiana Airlines, which sought amnesty.

1 72. Under the Antitrust Criminal Penalty Enhancement and Reform Act
2 of 2004, a company can apply for leniency from the Department of Justice for its
3 participation in antitrust activities. Under the so-called Corporate Leniency
4 Program, if a company comes forward with information about antitrust activities
5 and cooperates in the investigation, it is eligible for conditional amnesty from
6 prosecution.

7 73. Both Korean Air and Asiana Airlines are among the top transpacific
8 carriers in the world. It was not the first time Korean Air and Asiana Airlines have
9 been implicated in collusion and anticompetitive behavior. The Korean Fair Trade
10 Commission fined Korean Air and Asiana in 2001 for conspiring to set passenger
11 air transportation services in Korea.

12 74. In addition, several of the Defendants and unnamed co-conspirators
13 have been identified as targets and or subjects in international investigations by
14 the U.S. Department of Justice and the European Union into air cargo fuel
15 surcharge price fixing. The targets, many of which are also named in civil suits,
16 include Defendant All Nippon Airways, Defendant American Airlines, Asiana
17 Airlines, Defendant Japan Airlines, Korean Airlines, Defendant Northwest
18 Airlines, Defendant Qantas Airways and Defendant United Airlines. In both the
19 air passenger and cargo investigations, Defendants and other airlines are accused
20 of developing and participating in conspiracies to increase revenue by assessing
21 inflated Fuel Surcharges.

22 ADMISSIONS BY CO-CONSPIRATORS

23 75. On August 13, 2007, Qantas Chief Executive Officer Geoff Dixon
24 announced that **Qantas Airways** would set aside \$40 million to cover a potential
25 fine in the United States as a result of Fuel Surcharges and price fixing in its
26 freight division. In a news release, Dixon was quoted as saying:

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1 **“On 1 August 2007, the U.S. Department of Justice announced**
2 **that British Airways and Korean Air had agreed to plead guilty**
3 **and pay separate US\$300 million criminal fines for their roles in**
4 ***conspiracies to fix prices of passenger and cargo flights.* British**
5 **Airways subsequently announced that US\$200 million of its fine**
6 **related to cargo. Based on these developments, a decision has**
7 **been made to make a US\$40 million (A\$47 million) provision in**
8 **the 2006/07 Financial Accounts.”**

9 Dixon also was quoted as saying:

10 **“We have investigated this issue thoroughly and are confident**
11 **that the unacceptable conduct was limited to a small number of**
12 **people.”**

13 76. On October 6, 2007, the Japanese daily newspaper *Asahi Shimbun*
14 reported that **Japan Airlines International** would book a roughly \$171 million
15 charge for potential fines from a global price fixing probe by U.S. and European
16 Union officials. The newspaper said:

17 **“The company’s move comes after the U.S. Justice Department**
18 **fined British Airways PLC and Korean Air Lines Co. \$300**
19 **million each in August for fixing the prices of passenger and**
20 **cargo flights with other airlines. The companies allegedly**
21 **conspired to set fuel surcharges when oil prices rose.”**

22 **VIOLATIONS ALLEGED**

23 77. During the Class Period Defendants engaged in a continuing
24 agreement, understanding, and conspiracy in restraint of trade to artificially raise,
25 fix, maintain, and/or stabilize the prices of Passenger Air Transport and Fuel
26 Surcharges in the United States and throughout the world in violation of Section 1
27 of the Sherman Act, 15 U.S.C. § 1.
28

1 78. In formulating and effectuating the alleged contract, combination, or
2 conspiracy, Defendants engaged in anti-competitive activities, the purpose and
3 effect of which were to artificially raise, fix, maintain, and/or stabilize the prices
4 of Passenger Air Transport and Fuel Surcharges. These activities included the
5 following:

6 a. agreeing to charge prices of Passenger Air Transport and Fuel
7 Surcharges at certain levels and otherwise to fix, raise, maintain, and/or stabilize
8 the prices of Passenger Air Transport and Fuel Surcharges charged in the United
9 States and throughout the world;

10 b. charging Passenger Air Transport and Fuel Surcharges at the
11 agreed-upon rates;

12 c. signaling increases in the price of Passenger Air Transport and
13 Fuel Surcharges by, *inter alia*, publicly announcing their increases;

14 d. moving prices of their Passenger Air Transport and Fuel
15 Surcharges in lockstep; and

16 e. announcing new Passenger Air Transport and Fuel Surcharges
17 prices nearly simultaneously or within days of each other.

18 79. During the Class Period, the Defendants increased, as a ratio to
19 external costs – and profits – the Passenger Air Transport and Fuel Surcharges
20 they charged. These increases in Passenger Air Transport and Fuel Surcharges
21 cannot be explained by actual increases in fuel prices or supply/demand forces, but
22 rather were the result of anticompetitive conduct.

23 80. During the Class Period, Plaintiffs and members of the Class
24 purchased Passenger Air Transportation directly from Defendants (or their agents,
25 subsidiaries, and/or controlled affiliates).

26 81. The illegal combination and conspiracy alleged herein has had the
27 following effects, among others:
28

- 1 a. Price competition in the pricing of Passenger Air
2 Transportation and Fuel Surcharges thereon has been restrained, suppressed,
3 and/or eliminated;
- 4 b. Price competition in the contracting of Passenger Air
5 Transportation has been restrained, suppressed, and/or eliminated;
- 6 c. Prices for Passenger Air Transportation and Fuel Surcharges
7 thereon charged by Defendants have been fixed, raised, maintained, and/or
8 stabilized at artificially high, non-competitive levels; and
- 9 d. Members of the Class have been deprived of the benefit of free
10 and open competition.

11 **FRAUDULENT CONCEALMENT**

12 82. Throughout the relevant period, Defendants affirmatively and
13 fraudulently concealed their unlawful conduct from Plaintiffs and the Class.

14 83. Plaintiffs and the members of the Class did not discover, and could
15 not discover through the exercise of reasonable diligence, that Defendants were
16 violating the antitrust laws as alleged herein until shortly before this litigation was
17 commenced. Nor could Plaintiffs and the members of the Class have discovered
18 the violations earlier than that time because Defendants conducted their
19 conspiracy in secret, concealed the nature of their unlawful conduct and acts in
20 furtherance thereof, and fraudulently concealed their activities through various
21 other means and methods designed to avoid detection. The conspiracy was by its
22 nature self-concealing.

23 84. Plaintiffs and the members of the Class could not have discovered the
24 unlawful conduct at an earlier date through the exercise of reasonable diligence
25 because of Defendants' active and purposeful concealment of their unlawful
26 activities.

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1 85. Defendants engaged in a successful, illegal price-fixing conspiracy
2 with respect to Surcharges and other fees, which they affirmatively concealed, in
3 at least the following respects:

4 a. By agreeing among themselves not to discuss publicly, or
5 otherwise reveal, the nature and substance of the acts and communications in
6 furtherance of their illegal scheme;

7 b. By engaging in secret meetings and telephone calls in order to
8 further their illicit Passenger Air Transportation and Fuel Surcharges cartel; and/or

9 c. By giving false and pretextual reasons for their pricing for
10 Passenger Air Transportation and Fuel Surcharges thereon, and their increases,
11 during the relevant period and by describing such pricing and increases falsely as
12 being the result of external costs rather than collusion.

13 86. As a result of Defendants' fraudulent concealment of their
14 conspiracy, Plaintiffs and the Class assert the tolling of any applicable statute of
15 limitations affecting the rights of action of Plaintiffs and the members of the Class.

16 **INJURY TO PLAINTIFFS AND THE CLASS**

17 87. During the Class Period, Plaintiffs and the members of the Class,
18 because of Defendants' antitrust violations, paid Surcharges and other fees they
19 would not have paid absent such violations.

20 88. As a result, Plaintiffs and the members of the Class it seeks to
21 represent have been injured and damaged in their business and property in an
22 amount to be determined according to proof.

23 89. As a direct and proximate result of the illegal conspiracy, Plaintiffs
24 and the members of the Class have been injured and financially damaged in their
25 respective businesses and property, in that they have paid Surcharges and other
26 fees during the Class Period they would not have paid in the absence of the illegal
27 conspiracy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that:

A. The Court determine that this action may be maintained as a class action under Rule 23(a) and (b) (3) of the Federal Rules of Civil Procedure;

B. The Court adjudge and decree that the contract, combination and conspiracy alleged herein is a per se unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

C. Judgment be entered against Defendants, jointly and severally, and in favor of Plaintiffs and the Class for damages as allowed by law as determined to have been sustained by them;

D. Each of the Defendants, successors, assigns, parents, subsidiaries, affiliates and transferees, and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf of Defendants or in concert with them, be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the combinations, conspiracy, agreement, understanding or concert of action, or adopting any practice, plan, program or design having a similar purpose or effect in restraining competition;

E. The Court award Plaintiffs and the Class attorneys' fees and costs, and pre-judgment and post-judgment interest as permitted by law; and

F. The Court award Plaintiffs and the Class such other and further relief as may be necessary and appropriate.

DATED: November 6, 2007

COTCHETT, PITRE & McCARTHY

ENGSTROM LIPSCOMB & LACK

By: 

JOSEPH W. COTCHETT

Attorneys for Plaintiffs and the Class

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all of the claims asserted in this Complaint so triable.

DATED: November 6, 2007

**COTCHETT, PIERRE & McCARTHY
ENGSTROM LIPSCOMB & LACK**

By: 

JOSEPH W. COTCHETT

Attorneys for Plaintiffs and the Class